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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/098,636 | 03/15/2002 | David L. Kuntz | ETS-0204 | 7394 |
| 23377 | 7590 | 12/31/2003 | | |
| WOODCOCK WASHBURN LLP ONE LIBERTY PLACE, 46TH FLOOR 1650 MARKET STREET PHILADELPHIA, PA 19103 | | | EXAMINER HARRIS, CHANDA L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3714 | |
| | | | DATE MAILED: 12/31/2003 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/098,636

Applicant(s)

KUNTZ ET AL.

Examiner

Chanda L. Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 14-20 and 28 is/are rejected.
- 7) ☒ Claim(s) 7-13 and 21-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

In reply to the response filed on 10/10/03, Claims 1-28 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 15 recites the limitation "the test taker" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 14-20, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Driscoll et al. (US 5,987,302) in view of Kraft (US 4,978,305).

1. [Claims 1,15]: Regarding Claims 1 and 15, Driscoll discloses a computer including an assessment program. Driscoll discloses linking information to the identity of a test taker (i.e. information about the student) who created a received constructed response (i.e. essay). Driscoll discloses a scoring model (i.e. scoring guidelines) for discrete scorable classifications (e.g. based upon at least one of the time of submission of the essay response and the date an evaluation of the essay response is due to the examinee, by topic) of said cases. See Col.3: 14-17, Col.4: 41-46, 49-65, Col.8: 40-44, Col.10: 18-19, 59-63, 65-66. Driscoll discloses a database that stores data concerning constructed responses (i.e. overall comment and pre-defined additional comments) and permits the cases to be accessed. See FIG.1-2 and Col.5: 11-20.

Driscoll does not disclose expressly relating constructed responses (i.e. essays) to cases (i.e. folders) for assessment as an object, said cases having different states corresponding to the status of the case in the assessment

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process. However, Kraft teaches such in Col.5: 55-Col.6: 9 and Col.9: 36-46.

Therefore, at the time of the invention, it would have been obvious to incorporate the aforementioned limitations into the method and system of Driscoll, in light of the teaching of Kraft, in order to raise the quality and efficiency of the reading/grading process.

2. [Claims 2, 16]: Regarding Claims 2 and 16, Driscoll discloses wherein constructed responses relate to prompts, each prompt, which, in turn, relates to at least one discrete scorable classification, said discrete scorable classifications being organized by said assessment program into sets of cases that are scored similarly (e.g. by topic). See Col.10: 58-63 and Col.10: 65-Col.11:2.

3. [Claims 3-4, 17-18]: Regarding Claims 3-4 and 17-18, Driscoll discloses wherein said scoring model and said discrete scorable classifications are associated with one another and said scoring model defines business rules (i.e. rubrics) for scoring the constructed responses associated with the discrete scorable classifications associated with that scoring model and wherein the assessment program distributes the case using said business rules. See Col.4: 41-46 and Col.8: 44-46.

4. [Claims 5, 19]: Regarding Claims 5 and 19, Driscoll discloses wherein the assessment program enables an assessor to create at least one scoring record (i.e. overall comment and predefines additional comments) that is linked to a corresponding case. See Col.5: 11-20.

5. [Claims 6, 20]: Regarding Claims 6 and 20, Driscoll discloses wherein the assessment program enables an assessor to create a scoring record including at

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least one of a written commentary from the assessor to justify a score, a feedback commentary to the test taker (i.e. overall comment and pre-defined additional comments), and a customizable form of scoring data. See Col.5: 11-20.

6. [Claims 14, 28]: Regarding Claims 14 and 28, Driscoll discloses wherein said assessment program enables an administrator (i.e. reader leader) to access a case to modify the content of the case. See Col.9: 11-14.

Allowable Subject Matter

Claims 7-13 and 21-27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Jongsma et al. (US 6,267,601)
-scoring status
- Trenholm et al. (US 6,120,299)
-item status
- Strub et al. (US 6,652,287)
-storing status information

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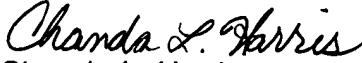
Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. See rejection above. Therefore, this action is made NON-FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Chanda L. Harris
Examiner
Art Unit 3714

ch.